

By: Leach

H.B. No. 614

A BILL TO BE ENTITLED

AN ACT

relating to the procedure for action by the Texas Commission on Environmental Quality on an application for a water right.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 11.129, Water Code, is amended to read as follows:

Sec. 11.129. REVIEW OF APPLICATION[~~, AMENDMENT~~]. (a) In this section:

(1) "Administratively complete" means an application includes the information and fees required under Sections 11.124, 11.125, 11.1271, and 11.128 and, if applicable, Sections 11.126, 11.127, and 11.1272.

(2) "Technical review" means the part of the process of reviewing an application after the executive director has determined the application is administratively complete in which technical material is analyzed and reviewed in order to prepare a draft permit and draft notice.

(b) Not later than the 30th working day after the date the executive director receives an application, the executive director shall review the application and provide to the applicant:

(1) written notice that the application is administratively complete; or

(2) a written request for information that describes in detail the information that the applicant must provide in order

1 for the application to be considered administratively complete.

2 (c) Not later than the 30th day after the date an applicant
3 receives a request under Subsection (b)(2), the applicant must
4 submit a response to the request. Not later than the 30th working
5 day after the date the executive director receives a timely
6 response, the executive director shall review the response and
7 provide to the applicant:

8 (1) written notice that the application is
9 administratively complete; or

10 (2) a written request for information that describes
11 in detail the information that the applicant must provide in order
12 for the application to be considered administratively complete.

13 (d) The applicant may request an extension of the time to
14 submit a response to a request under Subsection (b)(2) or (c)(2).
15 The executive director shall grant the request if the applicant
16 demonstrates good cause for the extension. An extension under this
17 subsection extends the deadline provided by Subsection (e) by the
18 same amount of time as the amount of the extension.

19 (e) Not later than the 180th day after the date the
20 executive director receives the application, the executive
21 director shall:

22 (1) provide the applicant written notice that the
23 application is administratively complete; or

24 (2) return the application and the entire filing fee
25 to the applicant and provide the applicant with a list of the
26 deficiencies in the application.

27 (f) The applicant is entitled to file a motion to overturn

1 the return of the application and dispute an application
2 deficiency. The motion to overturn may be overruled by operation of
3 law under commission rules. If the commission holds a hearing on
4 the motion to overturn, the commission shall issue an order:

5 (1) denying the motion and confirming the executive
6 director's return of the application to the applicant;

7 (2) granting the motion, reinstating the application,
8 and remanding the application to the executive director to request
9 additional information necessary to render the application
10 administratively complete; or

11 (3) granting the motion, reinstating the application,
12 and declaring that the application is administratively complete.

13 (g) If the executive director requests additional
14 information from the applicant under Subsection (f)(2), the
15 applicant must provide the information to the executive director
16 not later than the 30th day after the date the executive director
17 issues the request. The executive director shall review the
18 material and:

19 (1) provide the applicant written notice that the
20 application is administratively complete; or

21 (2) return the application and the entire filing fee
22 to the applicant and provide the applicant with a list of the
23 deficiencies in the application.

24 (h) After the executive director or the commission
25 determines that the application is administratively complete, the
26 executive director shall conduct a technical review of the
27 application. As part of the review, the executive director shall

1 determine whether the applicable water conservation and drought
2 contingency plans under Sections 11.1271 and 11.1272 are adequate.

3 (i) The executive director shall act on applications that
4 relate to new appropriations of water in the same river basin in the
5 order in which they are declared administratively complete. If for
6 an application that has been declared administratively complete the
7 executive director grants an extension or the applicant files a
8 motion to overturn, the executive director shall extend the
9 relevant deadlines for any application:

10 (1) declared administratively complete after the
11 application for which the extension was granted or the motion was
12 filed; and

13 (2) that relates to a new appropriation of water in the
14 same river basin as the application for which the extension was
15 granted or the motion was filed.

16 (j) The executive director shall provide notice in a timely
17 manner to an applicant who receives an extension under Subsection
18 (i).

19 (k) Not later than the 180th day after the date on which the
20 technical review begins, the executive director shall provide the
21 applicant with:

22 (1) written notice that the technical review is
23 complete, a draft permit, a draft notice, and technical memoranda
24 associated with the application; or

25 (2) a written request for technical information as
26 determined by the executive director to be necessary for the
27 completion of the technical review.

1 (l) With notice to the applicant, the executive director may
2 extend the deadline provided by Subsection (k) for a period of 30
3 days. The executive director may not extend the deadline more than
4 three times.

5 (m) Not later than the 60th day after the date the applicant
6 receives a request under Subsection (k)(2), the applicant must
7 provide the requested information to the executive director.

8 (n) The applicant may request an extension of the deadline
9 provided by Subsection (m). The executive director shall grant the
10 request if the applicant demonstrates good cause for the extension.

11 (o) Not later than the 60th day after the date the executive
12 director receives a timely response to a request under Subsection
13 (k)(2), the executive director shall review the response and
14 provide the applicant with:

15 (1) written notice that the technical review is
16 complete, a draft permit, a draft notice, and technical memoranda
17 associated with the application; or

18 (2) written notice that the response to the request
19 for technical information is deficient.

20 (p) If the executive director provides notice under
21 Subsection (o)(2), the executive director and the applicant must
22 collaborate in a good faith effort to resolve the deficiency. Not
23 later than the 180th day after the date the executive director
24 provides the notice, the executive director shall:

25 (1) provide the applicant with written notice that the
26 technical review is complete, a draft permit, a draft notice, and
27 technical memoranda associated with the application; or

1 (2) return the application and the use fee and the
2 unused portion of the notice fee as prescribed by commission rule to
3 the applicant and provide the applicant with a list of the
4 deficiencies with the application.

5 (g) The applicant is entitled to file a motion to overturn
6 the return of the application and dispute an application
7 deficiency. The motion to overturn may be overruled by operation of
8 law under commission rules. If the commission holds a hearing on
9 the motion to overturn, the commission shall issue an order:

10 (1) denying the motion and confirming the executive
11 director's return of the application to the applicant;

12 (2) granting the motion, reinstating the application,
13 and remanding the application to the executive director to request
14 additional information necessary to complete the technical review
15 of the application; or

16 (3) granting the motion, reinstating the application,
17 and requiring the executive director to prepare the draft permit,
18 draft notice, and technical memoranda associated with the
19 application and written notice that the technical review is
20 complete.

21 (r) If the executive director requests additional
22 information from the applicant under Subsection (g)(2), the
23 applicant must provide the information to the executive director
24 not later than the 30th day after the date the executive director
25 issues the request. The executive director shall review the
26 material and:

27 (1) provide the applicant written notice that the

1 technical review is complete, a draft permit, a draft notice, and
2 technical memoranda associated with the application; or

3 (2) return the application and the use fee and the
4 unused portion of the notice fee as prescribed by commission rule to
5 the applicant and provide the applicant with a list of the
6 deficiencies in the application.

7 (s) The applicant may request an extension of the deadline
8 provided by Subsection (r). The executive director shall grant the
9 request if the applicant demonstrates good cause for the extension.

10 (t) Not later than the 14th day after the date the applicant
11 receives the draft permit, draft notice, and technical memoranda
12 associated with the application, the applicant must provide the
13 executive director with:

14 (1) the applicant's comments on the draft permit,
15 draft notice, and technical memoranda; or

16 (2) a statement that the applicant has no comment on
17 the draft permit, draft notice, or technical memoranda.

18 (u) The applicant may request an extension of the time to
19 submit comments under Subsection (t)(1). The executive director
20 shall grant the request if the applicant demonstrates good cause
21 for the extension.

22 (v) The executive director shall file the draft permit,
23 draft notice, and technical memoranda associated with the
24 application with the chief clerk of the commission:

25 (1) not later than the 14th day after the date the
26 executive director receives comments under Subsection (t)(1),
27 during which time the executive director and the applicant must

1 collaborate to address the comments; or

2 (2) immediately on receipt of a statement described by
3 Subsection (t)(2).

4 (w) Notwithstanding any other provision of this section, if
5 the executive director makes a written determination that notice is
6 not required for an application, the executive director shall grant
7 or deny the permit for which the application is filed not later than
8 the 300th day after the date the executive director receives the
9 application. This period shall be extended by the same amount of
10 time as the amount of any extension of time granted to the applicant
11 for the provision of information [~~The commission shall determine~~
12 ~~whether the application, maps, and other materials comply with the~~
13 ~~requirements of this chapter and the rules of the commission. The~~
14 ~~commission may require amendment of the application, maps, or other~~
15 ~~materials to achieve necessary compliance].~~

16 SECTION 2. Section 11.133, Water Code, is amended to read as
17 follows:

18 Sec. 11.133. HEARING. (a) At the time and place stated in
19 the notice, the commission shall hold a hearing on the application.
20 Any person may appear at the hearing in person or by attorney or may
21 enter an [~~his~~] appearance in writing. Any person who appears may
22 present objection to the issuance of the permit. The commission may
23 receive evidence, orally or by affidavit, in support of or in
24 opposition to the issuance of the permit, and it may hear arguments.

25 (b) The commission may not refer an issue regarding an
26 application to the State Office of Administrative Hearings for a
27 hearing unless the commission determines that the issue is:

1 (1) a disputed question of fact; and
2 (2) relevant and material to a decision on the
3 application.

4 (c) If the commission grants a request for a hearing, the
5 commission shall:

6 (1) determine the number and scope of issues to be
7 referred to the State Office of Administrative Hearings for a
8 hearing; and

9 (2) consistent with the nature and number of issues to
10 be considered at the hearing, specify the maximum expected duration
11 of the hearing, which may not exceed a period of 270 days.

12 (d) If the application has been determined to be
13 administratively complete and the time for requesting more
14 information under Section 11.129(k)(2) has expired, the
15 commission:

16 (1) may not revoke the determination that the
17 application is administratively complete; and

18 (2) may request additional information from the
19 applicant only if the information is necessary to make a final
20 determination on the application.

21 (e) A request for information under Subsection (d)(2) does
22 not render the application administratively incomplete.

23 (f) If the commission refers an issue regarding an
24 application to the State Office of Administrative Hearings for a
25 hearing, the administrative law judge who conducts the hearing may
26 not grant party status to a person who failed to seek party status
27 from the commission before the issue was referred to the office.

1 (g) In the event of a conflict between this section and any
2 other law, this section prevails.

3 SECTION 3. (a) As soon as practicable after the effective
4 date of this Act, the Texas Commission on Environmental Quality
5 shall adopt rules to implement the changes in law made by this Act.

6 (b) The changes in law made by this Act apply only to an
7 application for a new or amended water right received by the Texas
8 Commission on Environmental Quality on or after the effective date
9 of the rules adopted under Subsection (a) of this section. An
10 application received before the effective date of the rules adopted
11 under Subsection (a) of this section is governed by the law in
12 effect on the date the application was received, and the former law
13 is continued in effect for that purpose.

14 (c) On notice to the applicant, beginning on the effective
15 date of the rules adopted under Subsection (a) of this section, the
16 executive director of the Texas Commission on Environmental Quality
17 may extend the period for technical review of an application for a
18 new or amended water right under Section 11.129, Water Code, as
19 amended by this Act, by a period not to exceed 18 months from the
20 date the rules take effect if:

21 (1) on the effective date of the rules there are
22 applications for new or amended water rights pending before the
23 commission the technical review of which has not been completed;
24 and

25 (2) the applications described by Subdivision (1) of
26 this subsection affect the same river basin as the application for
27 which the technical review period is extended.

1 (d) During an extension under Subsection (c) of this
2 section, the executive director shall take all practicable measures
3 to substantially meet all other applicable deadlines in Section
4 [11.129](#), Water Code, as amended by this Act, related to the technical
5 review of an application.

6 SECTION 4. This Act takes effect immediately if it receives
7 a vote of two-thirds of all the members elected to each house, as
8 provided by Section [39](#), Article III, Texas Constitution. If this
9 Act does not receive the vote necessary for immediate effect, this
10 Act takes effect September 1, 2017.